Exhibit A

1   IN THE UNITED STATES DISTRICT COURT
             FOR THE EASTERN DISTRICT OF TEXAS
2   MARSHALL DIVISION

3   HEADWATER RESEARCH, LLC,   (CAUSE NO. 2:23-CV-103-JRG
)
4   Plaintiff,   (
)
5   vs.   (
)
6   SAMSUNG ELECTRONICS CO., LTD., (
     et al.,   ) MARSHALL, TEXAS
7   (JULY 11, 2024
              Defendants.   ) 1:30 P.M.
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                       MARKMAN HEARING
12
             BEFORE THE HONORABLE ROY S. PAYNE
13   UNITED STATES MAGISTRATE JUDGE

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22   SHAWN McROBERTS, RMR, CRR
                  100 E. HOUSTON STREET
23   MARSHALL, TEXAS 75670
                    (903) 923-8546
24   shawn_mcroberts@txed.uscourts.gov

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1   means 'device agents' can be read to include apps, and we know

2   that's not the case. And this demonstrates why the term is

3   indefinite, because it has no meaning that would cabin it, at

4   least the way Headwater argues it, to exclude applications.

5   Now, Your Honor, I understand that negative constructions

6   are not always favored, and I see that to -- I understand why

7   that's the case. But in this situation a dispute -- a claim

8   construction dispute has been raised because we believe the

9   claim is indefinite and we believe their interpretation

10   further renders it indefinite, and that's the only reason I'm

11   raising this to you now, Your Honor.

12   THE COURT: You know, there can be broad terms that

13   have some overlap that still have a definite meaning, and one

14   of my problems with your request for a construction that

15   excludes applications is the lack of any definition of

16   applications.

17   MR. YANG: Oh, okay. Sorry, Your Honor. I didn't

18   realize that that was an issue.

19   So 'applications', we believe, should be given its plain

20   and ordinary meaning. Now, by that, in the context of this

21   patent and mobile devices are things that a user can download

22   from the App Store, they can interface with, and they perform

23   their own functions--right?--so a gaming app, internet browser

24   app that you download, antivirus software app that you

25   download. And we believe it gets the normal plain and

1   unclear. So yes, it's not a term of degree, but the term

2   itself also has boundary issues, and that's why I think the

3   same logic or the same legal principles underlying the cases

4   that you have -- the case that you had in the *Techiya* case

5   underlied this case as well. So you have to look at the

6   specification, see what it discloses, if you're going to try

7   to save the term from indefiniteness.

8   THE COURT: I understand that it looks like trying

9   to save a term from indefiniteness, but what it actually is is

10   trying to determine the scope of the term and -- anyway, I'm

11   reluctant to say that just because two terms are used in the

12   same specification, that they can't have any overlap. And,

13   you know, 'applications' are a broad term. 'Device agent' is

14   also a broad term. The fact that both terms appear means that

15   they're not identical, or at least certainly supports that

16   argument, but it doesn't mean that there can't be some overlap

17   between them.

18   MR. YANG: Your Honor, that's an interesting point,

19   and I think, you know, perhaps a way to resolve this is this

20   may be what I think Your Honor is suggesting--a factual

21   determination ultimately--right?-you know, whether something

22   is a device agent, whether it is not an application, whether

23   there's overlap on that particular thing we're looking at that

24   makes it both. Right?

25   So one possibility -- and I think that's a fair thing,

1   Excuse me, Your Honor, I just want to get back to -- I

2   went the wrong direction.

3   So on 'applications', we have three main problems with

4   their construction. One, it's procedurally improper. We went

5   into this in the briefing, but it's clearly waived. It was

6   raised for the first time on page 13 of their response brief.

7   I think it is also legally incorrect. And I think

8   counsel even admitted, you know, the necessity to have

9   lexicography or disclaimer, and especially when we're talking

10   about negative limitation, and there's no attempt in either

11   the argument or the briefing to meet, like, that standard.

12   And third, Your Honor, we do have a problem factually

13   with it--right?--which is we have the plain and ordinary

14   meaning of 'agent' or 'device agent'. That's in Your Honor's

15   tentative. It's also on this slide reflected in Doctor

16   Turnbull's declaration and dictionary definitions. And then

17   the question is, is there lexicography or disclaimer that

18   removes something from that. I think legally there's no case

19   for that.

20   And just factually we don't know what they mean by

21   'application'. I think for the first time there was some

22   argument about applications downloaded from an app store or

23   typically downloaded. I mean, we don't know what that means,

24   and that creates all sorts of issues that would confuse things

25   and we think are unsupported and both are broad terms.

1   'Application' is not a claim term for the '733 Patent, it's

2   not explained, defined, so I think any sort of negative

3   limitation would be unjustified.

4   And if we look at the plain and ordinary meaning of

5   'agent', there could be some overlap.   Maybe the entirety of a

6   device agent is not co-extensive with, you know, a third-party

7   application downloaded from the app store, but when we just

8   have the claim term of a device agent, there could be some

9   overlap or parts of applications or parts of applications in

10   conjunction with other software that we think makes it -- any

11   sort of negative construction inappropriate.

12   THE COURT: Well, Mr. Wang, are you reading 'device

13   agent' to cover what is ordinarily understood as an

14   application in the way that Samsung has been describing it

15   today?

16   MR. PHILIP WANG: I don't believe we are, Your

17   Honor. And I think what I said is what I just

18   explained--right?--which is that there is software -- in our

19   infringement contentions we talk about the operating system,

20   software that performs these functions, and I think we put

21   'and/or applications', and that we think that that is

22   appropriate.   If there is software, it could have some overlap

23   with parts of applications or parts of functionality.

24   And to the extent there is a valid argument that they

25   have, this seems to be an argument -- a factual dispute over